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“Who is this man who is distinct from this citizen?” Revisiting Marx’s Critique of Liberal Rights

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ABSTRACT Steven Lukes argues that Karl Marx underestimated the importance of human rights. For Lukes, Marx treated human rights only as expressions of the egoism and individualism of bourgeois society and, in doing so, underestimated both the danger of arbitrary political power and the protection afforded by individual rights. My first aim in this essay is to show four substantial problems with Lukes’ reading of “On the Jewish Question,” the text that Lukes finds to contain the “roots” of Marx’s view. My second aim is to argue that—a hundred and fifty years after the publication of *Capital*—a re-assessment of the marginality of rights in Marx’s thought is overdue. There is nothing in Marx’s thought that should discourage socialists from demanding such rights and this essay finds that this is not a connection between Marxism and socialism that needs severing.

Introduction¹

In his widely read article “Can a Marxist Believe in Human Rights?” and subsequent book *Marxism and Morality*, Steven Lukes argued that Marx was hostile to human rights.² Lukes contributed to a lively debate over whether Marx condemned capitalism as *unjust* and specifically to the question of how human rights fit into the framework of Marx’s thought. This debate over the role of justice in Marx’s thought arose from how, on the one hand, Marx rejects socialist critiques of capitalism that appeal to universal moral standards, maintaining that moral standards are socially and historically situated in social formations and relative to that mode of production. According to one reading, Marx shows in *Capital* that the capitalist purchase and employment of labor-power—however contrary to the class interests of the proletariat—do not involve any violation of the rights and moral standards inherent in the capitalist mode of production. On the other hand, however, Marx’s condemnation of capitalism often appears to have either an implicit or explicit moral content.³ Lukes argued that Marx rejected “the morality of *Recht*” based on concepts of justice, fairness, rights, and obligations that Marx regarded as inherent to particular modes of production (although Lukes maintains that Marx nevertheless valued freedom, social unity, and self-realization).⁴ For Lukes, Marx treated human rights only as expressions of the egoism and individualism of bourgeois society and, as they were only necessitated by conflicting economic interests within class societies, communist society could dispense with rights.⁵ According to Lukes, Marx dangerously underestimated the protection afforded by individual rights as moral constraints on goal-directed behavior.⁶ Lukes offers not “another anti-marxist tract” but a “diagnostic” of “congenital defects” of Marxism,⁷ concluding that Marx’s position is incompatible with defending human rights and therefore Marxism and socialism should sever this link with Marx’s thought.⁸

Some of the responses to Lukes focused on the question of whether a Marxist should believe in human rights or on Lukes’ understanding of the Marxist tradition.⁹ This essay shall contribute to the section of the literature that Lukes’ reading fails to do justice to

Marx's critique of rights and liberalism.¹⁰ This is important because, a hundred and fifty years since the publication of the first volume of *Capital*, the suspicion around Marx's attitudes towards rights persists and the claim that Marx was hostile to the very idea of rights remains, as David Leopold put it, "an interpretative commonplace."¹¹ In this essay, I challenge Lukes' interpretation and show that there is no evidence that Marx was hostile to the very idea of rights. Since Lukes finds the "roots" of Marx's supposedly "impoverished" view of human rights in "On the Jewish Question," the first part of this essay shows four problems with his reading of this text.¹² After noting, as other commentators have, that Marx does not critique all rights as egoistic and indeed values some rights, for example citizens' rights, I discuss a second issue: Marx both criticizes citizens' rights as limited in their current form and recognizes a progressive aspect to the rights of man. My alternative reading, and the contribution of this essay to this section of the literature, is that Marx in "On the Jewish Question" criticizes rights in relation to a teleological conception of social and historical progress. I conclude this section of the essay by noting that while Marx finds the idea that individual rights are "natural" alienating because it externalizes a product of the human mind, this does not mean he did not consider the winning of rights to be important victories in the historical struggle for freedom, and that Marx's critique of arbitrary political power (both between feudal master and servant and in the instrumental relations of bourgeois civil society) is a central problem of his political thought, especially of his writings from this period.

In the second section of the essay, I turn to Marx's critique in *Capital* of the "very Eden of the innate rights of man." I show that Marx's critique of rights in the sphere of capital circulation is not a critique of rights *per se*, not least because an important part of his critique is that the establishment of these rights requires the dispossession of pre-capitalist rights. Marx treats rights as legal relations internally related to political forces, forms of consciousness, social relations, and productive forces specific to certain historical moments, not universal or timeless. His critique of rights in *Capital*, then, is first and foremost a critique of the historically specific rights that underpin bourgeois political economy, not a critique of rights as expressions of egoism.

1. The rights of man and the rights of the citizen

Marx wrote "On the Jewish Question" in 1843–4, shortly before he produced his first communist texts.¹³ Marx examines the rights proclaimed in the French Declarations of 1789 and 1793 and in the state constitutions of Pennsylvania and New Hampshire. He concludes:

Therefore not one of the so-called rights of man goes beyond egoistic man, man as a member of civil society, namely an individual withdrawn into himself, his private interest and his private desires and separated from the community . . . The only bond which holds them together is natural necessity, need and private interest, the conservation of their property and their egoistic persons.¹⁴, 230.]

This comment and others like it provide the basis for Lukes' reading of the text and his claim that Marx's later writings inherit a dismissive attitude towards rights. Here, Marx critiques the rights to liberty, equality, and security as fundamentally the rights of the owner of private property to enjoy and dispose of goods, revenues, and fruits of labor according to arbitrary will and self-interest—without regard for, or interference from, others. Equal treatment under the law and security guarantee this individual freedom to all property owners.¹⁵

Lukes understands Marx's critique as treating rights as merely the expressions of the egoism and individualism of bourgeois civil society. He construes rights as "typically the

basis for claims by individuals to be treated in certain ways: rights offer the *interests* of these individuals as sufficient grounds for holding another or others to be under an obligation to treat them in certain ways¹⁶ and understands *human rights* to override other goals (such as the accumulation of value in a capitalist economy) or less central rights.¹⁷ As Lukes argues, “taking some rights seriously is positively to demand a certain form of social life in which social relationships flourish free of arbitrary power. To think of them merely as expressing the egoism of civil society and the contradictions between civil society and the state is precisely to fail to take them seriously.”¹⁸ Lukes concentrates on what are often categorized “first generation” civil and political rights, as well as economic and social rights or “second generation rights.” But, as Christopher Boyd points out, “[a]cceptance of the modern recognition of the heterogeneity of rights is an important step in the realisation that whether Marx believed in human rights is a different question from whether a Marxist can believe in human rights.”¹⁹ So-called “third generation” solidarity rights are claimed by groups or even by humanity and are thus not reflective of an inherent egoistic individualism.

Lukes follows Marx who, writing in the nineteenth century, concentrated on “first generation” rights. Lukes points to how not all the rights guaranteed in the American constitution and the French declarations can be easily called “egoistic” in the way Marx claims. Freedom of speech, the presumption of innocence, and protection from arbitrary arrest are “passed over in silence” by Marx because, Lukes supposes, they cannot be easily construed as bourgeois and “do not lend themselves to his interpretation.”²⁰ To support this reading, Lukes quotes Marx as writing that “the so-called rights of man” are “simply the rights of the member of society, that is of egoistic man, of man separated from other men, and from the community.”²¹ This is not, however, the full passage. What Marx actually writes is “the so-called *rights of man*, as distinct from the *rights of the citizen*, are quite simply the rights of *the member of society*, i.e. of egoistic man.”²² The first problem, then, with Lukes’ reading is how it omits this important distinction within what we can call “first generation” rights. Marx describes citizens’ rights as “political rights, rights which are only exercised in community with others . . . [in] participation in the political community or state. They come under the category of political freedom, of civil rights.” After this brief acknowledgement, Marx turns to “consider the other aspect, the *droits d’homme*, as distinct from the *droits d’citoyen*.”²³

The full passage shows that Marx refers to two sub-categories of rights: the rights of the member of civil society that he critiques as “egoistic” and the rights of the citizen that he treats as rights of participation in the political community. As Amy Bartholomew has noted, this full passage shows that Marx’s critique of rights as egoistic does not apply to all rights.²⁴ Marx does not claim this distinction as his own, but made in the French Declarations. As David Leopold has noted, Marx rather unhelpfully uses the label *Menschenrechte* to refer to both rights generally and the rights of man, but the distinction is clear enough in the text.²⁵ Marx’s example of a citizens’ right is freedom of religious conscience (given the context of Jewish emancipation), although he could have as easily chosen freedom of speech, assembly, and the right to participate in the formation of the law, i.e. examples of rights Lukes claims Marx ignores. As well as defending the right of religious conscience, Marx criticized the subordination of citizens’ rights under “egoistic” rights, and criticized the way the modern state acted as the guardian of bourgeois civil society and not of its own avowed ideals. He cites censorship in revolutionary France as an example of the modern state willingly sacrificing the freedoms it idealizes for “public security,” showing the state to be fundamentally the guardian of bourgeois civil society and in contradiction with its own avowed ideals.²⁶ When, in the published introduction to his *Critique of Hegel’s Philosophy of Right* (1844), Marx criticizes how Germany “combine[s] the civilised defects of the modern political world,

whose advantages we lack, with the barbaric defects of the *ancien régime*, of which we have our full measure,” he specifically cites “combining the torments of censorship with the torments of the French September Laws.”²⁷ His citing of the French September Laws of 1835, which restricted freedom of the press and the powers of juries, shows how Marx valued certain rights and distrusted the modern state’s commitment to protecting them. This was not the first time Marx defended the freedom of the press either—he criticized censorship as a journalist in 1842.²⁸ Lukes recognizes that Marx does defend individual rights in his writings; what the distinction between the rights of man and the rights of the citizen shows is that, contra Lukes, Marx’s defence is not inconsistent with his critique of “egoistic rights” (indeed, Marx supported rights that went further than these citizens’ rights, discussed below).²⁹

Marx still criticizes the winning of citizens’ rights as a limited or merely political form of emancipation and he even recognizes a progressive side to these “egoistic” rights. I argue that understanding Marx’s position requires recognizing the teleological view of history he defended in these early democratic republican writings, when he remained in some respects a young Hegelian.³⁰ According to this view, universal, rational freedom was the final cause or end to the development of human society, which in the *Critique of Hegel’s Philosophy of Right* Marx identified with “true democracy.”³¹ In “On the Jewish Question,” the final end of the political and social developments he identifies is “human emancipation.” Political emancipation (the process involving the separation of state from society, and the transformation of religion into private faith—of which the contemporary debate over Jewish emancipation served as a prime example) is “a big step forward . . . [it] may not be the last form of general human emancipation, but it is the last form of emancipation within the prevailing scheme of things.”³² Human emancipation consists in overcoming the contradiction between the state and civil society, and the citizen and the egoistic individual—reconciling human beings with the social world they have created. Instead of being restricted by these social contradictions, human beings can self-determine or freely shape the social world according to their nature. Therefore, Marx in 1843–4 is not against rights *per se* but judges their value in relation to historical progress understood in this sense.³³ This shows that Marx did not simply criticize bourgeois society for failing to live up to its own standards but critiqued, in characteristically Young Hegelian fashion, bourgeois society for both its contradictions and how these contradictions contain the potentiality for the realization of freedom in a new form of society.

To see the full picture, then, Marx’s critique of the historical limitations of bourgeois society has to be placed alongside his recognition of its historical achievements. Marx treated political emancipation as historically progressive because productive life under feudalism was simultaneously political for being organized in terms of social rank, with membership of estates, guilds, and corporations existing as “separate societies within society.”³⁴ For Marx, this meant a servile form of social existence under a feudal master. In his letters to Arnold Ruge published in the *Deutsch-französische Jahrbücher* alongside “On the Jewish Question” and the introduction, Marx attacks the “hereditary masters” of the estate who act as “slave-owners” and treat the people on their estate as a “breed of slaves or a stud of horses.”³⁵ Marx objects to such objectification and subordination under an arbitrary power and regards the establishment of the modern republic, a general community of *citizens* with universal rights, as a progressive step forward.³⁶ The establishment of a separate political sphere allowed for a civil society based on formally non-political (Marx recognizes their informal political character), instrumental relations between egoistic individuals.³⁷ Marx characterizes the “egoistic” life in bourgeois civil society as both a liberation and a “reduction.”³⁸ This liberating aspect refers to the dissolution of the old estates, guilds, and corporations, which allowed—as Marx

sympathetically quotes Hegel in the *Critique*—“personal choice of [one’s] station in life” or for the activity in civil society to be mediated by individuality and self-interest.³⁹ While this progressive aspect may include the universalization of property rights, the universalization of these property relations reduces the members of civil society into egoistic individuals. Indeed, Marx writes that “[p]olitical emancipation is the reduction of man on the one hand to the member of civil society, the *egoistic, independent* individual, and on the other to the *citizen*, the moral person.”⁴⁰ Marx critiques this social division and the way that the universal political association based on citizens’ rights consoles the individuals of civil society for the lack of community in their everyday, productive lives in a way comparable to religious consolation. Marx argues that final human emancipation will only be achieved once “real, individual man resumes the abstract citizen into himself” and that human powers and relationships are reorganized as social forces.⁴¹

Bartholomew is right to note that Marx’s criticism of the rights of this commercial civil society was that not one of them “*goes beyond* egoistic man.”⁴² For Marx, it is *insufficient* because it dissolves these communities, however oppressive they were, leaving human beings to act in the market as individuals. It is true that Marx finds that these external relations between human beings as egoistic individuals “cannot sustain the individual as a member of a community, as a communal being.”⁴³ But, contrary to Lukes, the problem Marx finds with bourgeois civil society is not simply its lack of community. It is the way that participating in a market means being treated instrumentally by others, and treating them alike in return, and how this creates a new form dependence on an egoistic or arbitrary will. This new form of dependence in bourgeois civil society—“the slavery of egoistic need”—is more impersonal than in feudalism because laborers are not tied to any one private property owner but dependent on the market.⁴⁴ The universalization of property rights generalizes a new set of class relations. In the “Critique of Hegel,” Marx recognizes the precarious position of the propertyless “class of immediate labour” whose life in this civil society is in large part determined by the vicissitudes of the market.⁴⁵ The “domination of private property and money” has debased everything, Marx writes in “On the Jewish Question,” into an object of exchange, including human beings.⁴⁶ They are “the plaything of alien powers.”⁴⁷ “On the Jewish Question” also emphasizes how this dependence on the arbitrary will of another is not tied to any one particular person, as in the *ancien regime*, but is instead experienced as a generalized subordination under money:

As long as man is restrained by religion he can objectify his essence only by making it into an *alien*, fantastic being. In the same way, when under the sway of egoistic need he can act practically and practically produce objects only by making his products and his activity subordinate to an alien substance and giving them the significance of an alien substance—money.⁴⁸

Political emancipation, then, liberated human beings from the servitude under the *ancien regime*. However, the modern dualism of an externalized state and bourgeois civil society had created new forms of alienation and servitude. Marx therefore defends what he sees as the progressive aspects of this transformation and critiques the limits. He does this because one of his aims of the essay was to defend Jewish entitlement to both the rights of the citizen and the “egoistic” rights of bourgeois civil society. Frederick Wilhelm IV had in part reignited debate on Jewish emancipation by proposing to reintroduce Jewries in 1841 as a way of realizing his romantic ideals of medieval Christian Prussia.⁴⁹ For Marx, the exclusion of Jews was a vestige of the old order that enforced a society of separate societies and an anathema to his political views. In a letter explaining why he had agreed to help Jews in Cologne with a particular petition, he wrote “[t]he point is to punch as many holes in the Christian state and smuggle in rational views as far as we can.”⁵⁰

This aim required a response to Bruno Bauer's radical attack on Jewish emancipation. Bauer, a Young Hegelian philosopher and theologian who had been Marx's teacher and friend in Berlin, was drawn into this debate over Frederick Wilhelm's proposal after an exchange between between Carl Hermes, editor of the *Kölnische Zeitung* and Ludwig Philippson, editor of the *Allgemeine Zeitung des Judentums*. Bauer argued, contrary to both liberals and conservatives, that Christians and Jews were not in a position to grant and receive freedom respectively, which responded to the concerns that both camps had on the implications of emancipation on the Christian nature of Prussia and whether Jews were fit to become citizens.⁵¹ Bauer's argument was that, given how the rights entitled to Christians were privileges on the basis of birth and grace, and since extending such privileges to non-Christians would be a contradiction in the eyes of Christians, the Jewish demand that Christians compromised their religious identity while Jewish people clung to theirs was hypocritical. Bauer demanded that both Jews and Christians should renounce religion and demand universal rights recognizing their humanity. Additionally, he criticized Judaism as an "oriental" religion that fostered a self-segregating form of consciousness with a materialistic and irrational attachment to ritual and law.⁵² Marx entered the debate to defend Jewish entitlement to rights by pointing out that freedom of religious conscience is a right won on the basis of common humanity and thus there was nothing hypocritical about their demand for the same rights as other citizens, while wanting to keep their religion.⁵³ At the same time, Marx insisted, that the secular state created the legal framework for the renewed flourishing of religion as a private faith revealed the persistence of social alienation. Therefore, he wanted to both argue for Jewish entitlement to universal rights, implying their value, while also pointing out how far political emancipation fell short of real, human emancipation.

Marx *does* agree with Bauer that rights are not natural. He approvingly quotes Bauer's claim that rights are rather "the product of culture" and "the prize of the struggle against the accident of birth and the privileges which history has handed down from generation to generation" and he tends to refer to these rights as the "so-called rights of man."⁵⁴ Therefore, the third problem with Lukes' reading concerns Marx's contempt for the description of the rights of bourgeois civil society as natural. For Lukes, this serves as further evidence of his hostility towards rights but this does not recognize how Marx treated rights as important victories in what he saw as the struggle for freedom. Marx found the celebration of rights as natural to be an undignified act of self-alienation because, as with religious consciousness, it externalizes a product of the human mind as an alien other with an independent, natural existence.⁵⁵ Treating rights as natural obscures from humanity its own agency in the world, its own historical achievements, and the need to complete the task of realizing freedom in the social world through a democratic transformation of society. Marx objected to how the rights of the egoistic owner of private property, who treats others as means to his or her own ends, are naturalized, or, how their interests are presented as universal rights. In this way, Marx insists on treating rights as specific to certain forms of society and objects to misrepresenting rights as *human* rights.

Finally, Lukes argues that Marx's critique of the rights of man shows he underestimates the importance of how rights act as "side constraints" or set limits to social policies and to the individual pursuit of goals.⁵⁶ But, as we have seen, Marx is both aware of how rights helped liberate human beings from subordination under the old regime and repositioned individuals as dependent on the bourgeois owner of private property and the arbitrariness of the market. Marx chose to critique the rights of man, at least in part, because they provided the legal framework for this new system of subordination. In his "Critique of Hegel's Philosophy of Right," Marx had rejected what he saw as the arbitrary power of the monarchy, aristocracy, and bureaucracy of Hegel's state. Furthermore, he

rejected the division of society into egoistic civil society on the one hand and an abstract association of citizens on the other. He argued instead for a “true democracy” that would dissolve the externalization of the political association from civil society. Contrary to Hegel, Marx thought that a society governed by universal and impartial laws and conventions could only be realized through democratic means, including an elected legislature⁵⁷ and replacing professional bureaucracy with citizen participation,⁵⁸ rather than through Hegel’s “enlightened” institutions. Freedom required the people to choose their laws rather than having laws imposed on them by a particular individual or group who treat the state as their private property.⁵⁹ Furthermore, democratic participation through universal suffrage would reunite civil society with the political association and reunite individuals with their political identities as citizens. Boyd rightly notes, “If Marxism is compatible with human rights, it is the task of the Marxist to determine how rights may be involved in taking ‘the abstract citizen back into himself,’ as Marxism requires” and the right to vote, along with the other citizens’ rights, fit this criterion.⁶⁰ This radical, democratic republican argument underlines the importance Marx attributed to the rights of the citizen:⁶¹ to realize a universal, rational freedom based on impartial laws required, in his analysis, a democratic community and this required winning rights that enable such participation, such as freedom of conscience, speech and the press, assembly, and—importantly—the right to vote.⁶² The freedom with others in a true democracy requires these rights. But universal democratic participation in the formation and implementation of laws for Marx prevented the domination of the state by the arbitrary interests or personalities of particular individuals or groups.

In “On the Jewish Question,” Marx assumes that no self-respecting democracy would tolerate a sphere of generalized impersonal subordination or dependency. He assumes instead that a democratic community of self-ruling citizens would reject this distinction between politics and civil society, or the political and supposedly non-political, and ultimately this distinction between the rights of the citizen and the rights of man that expresses and mystifies it—“[w]ho is this man,” he asks, “who is distinct from this citizen?”⁶³ For many commentators, this would amount to illiberal, political interference in civil society.⁶⁴ For Marx, this would be an attempt by a democratic community to free itself from subordination under arbitrary power.⁶⁵ What I find interesting is that Marx’s support of citizens’ rights, as rights of participation in the community, raises questions about whether he anticipated this dualism of rights being replaced by rights to participate in both public administration and productive life and what those rights might have been.

2. Marx’s critique of rights in *Capital*

The section above refuted Lukes’ interpretation of “On the Jewish Question” as showing hostility towards rights. But the significance Lukes attributed to this text was that it formed the “roots” of a later hostility towards rights. I have found no reason to think that Marx’s writings after his adoption of communism inherited an earlier, dismissive conception of rights and this section will show this by examining Marx’s critique in volume I of *Capital* of the sphere of circulation in Capitalism as the “Eden of the rights of man.”⁶⁶

The sphere of circulation in capitalism refers to the exchange of commodities, including the capacity to labor, or labor-power. Marx describes this sphere as “a very Eden of the innate rights of man. It is the exclusive realm of Freedom, Equality, Property, and Bentham.” He continues in a well-known passage:

Freedom, because both buyer and seller of a commodity, let us say of labour-power, are determined only by their own free will. They contract as free persons, who are equal before the law . . . Equality, because each enters into relation with the other, as with a simple owner of commodities, and their

exchange equivalent for equivalent. Property, because each disposes only of what is his own. And Bentham, because each looks only to his own advantage... this sphere of simple circulation . . . provides the “free-trader *vulgaris*” with his views, his concepts and the standard by which he judges the society of capital and wage-labour.⁶⁷

The exchange of commodities, then, requires certain rights to take place, particularly rights of ownership over commodities. Marx’s treatment of the ideals of freedom and equality as fundamentally the freedom and equality of owners of private property recalls his critique in “On the Jewish Question.” Lukes’ claim is that Marx critiqued all rights because they express the individualism of capitalism and this passage, particularly the swipe against Bentham, may seem to support this reading. However, Marx’s view is that bourgeois rights require the alienation of the traditional rights of laborers. The “free-trader *vulgaris*” takes these rights and the ideals they embody as universal but Marx treats them as a part of specific historical circumstances and as ideological.⁶⁸ The freedom of the laborer to own and sell their labor-power to whomever they choose, for a certain period of time, is a case in point. This is a historically specific right because it requires the externalization of formal, political relations from the economic structure of society, absolving laborers from political obligations, such as those that tied the serf to the lord and estate. To be sure, the establishment of the right to own property, including both one’s own labor-power and the means of production, as a supposedly natural right marks a significant historical departure in the universalization of rights and their mystification of natural expresses this universalization. But in capitalism, these universal property rights reproduce a class structure through the universalization of property relations over labor-power, the means of production, and the surplus value produced by the worker but owned by the capitalist. This bourgeois freedom also involves being “free” of the land or being separated from the means of reproducing life, which obliges those with only their labor-power to sell to enter the sphere of circulation looking for employment.⁶⁹ Bourgeois political economy explained the social division between capitalists and workers in terms of the natural inequality of talents, frugality, and work ethic, and Marx dedicates some of the most memorable chapters in *Capital* to show how this sphere of exchange is actually predicated on a process of separation “written in the annals of mankind in letters of blood and fire.”⁷⁰ Marx presents this process of separating producers from land, and land from producers, or primitive accumulation, as a violent process, involving enclosure, forced evictions, brutal state punishments, genocide, and colonialism.⁷¹ Taking the British Isles as his case study, Marx describes how they transformed lands used for subsistence farming for generations were forcibly transformed into commercial sheep farms (not to mention hunting grounds for the nobility). Along with the disbanding of feudal retainers and the dissolution of the monasteries, Marx explains that the initial waves of expropriation in the fifteenth and sixteenth centuries were driven to expand the English wool industry. After the abolition of serfdom, these estates had become embedded in commercial relations and the enclosures violated the traditional system interpersonal dependence under which the peasants could rightfully claim to live on the estate.⁷² This is important because it shows how Lukes’ interpretation that rights for Marx can only express bourgeois individualism is mistaken. For Marx, the creation of bourgeois rights was a violent attack on traditional rights that were based on customary usage and multiple claims on the land. Indeed, Marx notes how these enclosures were initially illegal. Primitive accumulation, then, was part and parcel of the separation of the political from the productive that was central in establishing capitalism. Primitive accumulation amounted to theft of land and the alienation of the customary rights of the immediate producers,⁷³ and it turned the former into constant capital and the latter into “rightless

proletarians” (emphasis added) or—from the perspective capital accumulation—variable capital.⁷⁴

This shows that Marx does *not* critique rights *per se* as expressions of individualism. He treats rights as legal relations that are internally connected to the class structure and forces of production, not to mention forms of the state and social consciousness. That is, he treats the form and functioning of legal relations as explicable only in relation to these other moments as a totality or ensemble. When one is examined, it reveals the others because they co-evolve together.⁷⁵ His critique of primitive accumulation shows how the bourgeois right to own the means of production privately were established by attacking the feudal system of customary rights based on common use and traditional ties to the estate. Of course, Marx recognizes the abolition of serfdom and the achievement of self-ownership as a positive side to this development. Therefore, the problem is *not* with rights *per se*; the problem is that the specific rights of bourgeois society are predicated on making the former immediate producers *wage-slaves* or producers dependent on wages for the reproduction of their lives. In “On the Jewish Question,” Marx critiqued the dependence of the property-less laborer on the egoistic will of the bourgeois owner of private property. In *Capital*, he critiques the dependency of the worker on the social relation of value personified by the capitalist.⁷⁶

This reading will be disputed by some because it implies that Marx criticized capitalism as unjust. Referring to the passage quoted above, and to others,⁷⁷ some commentators argue that because Marx made the theoretical assumption that labor-power was *generally* exchanged in capitalism for its value—the cost of reproducing labor-power—Marx showed how the capitalists’ extraction of surplus-value from the proletariat is *consistent* with their holding the rights of freedom of exchange, equality under the law, and with notions of fairness and justice within capitalism.⁷⁸ This is because it is a free exchange of equivalent for equivalent by rightful owners of property and while it may involve the extraction of surplus-value, it is not *unjust*. Proponents of this view, then, understand Marx’s critique of rights and by extension moral standards as corresponding to, or conditioned by, a certain mode of production to mean that the only standard of justice applicable to capitalism is the one that accords with the capitalist mode of production.⁷⁹ Nevertheless, there is a great deal of textual evidence of Marx condemning the extraction of surplus-value as a form of robbery, which implies an injustice in a non-capitalist sense.⁸⁰ It has been persuasively argued that Marx shows in the passage quoted above that it is the bourgeois “free-trader *vulgaris*” who thinks that capitalist exchange is performed on the basis of freedom, equality, and justice. Marx’s critique shows this to be a superficial view, reminding his reader that these require the proletariat experience wage-dependency and the loss of independent access to the means of production. As for the fact that labor-power can produce more value than required to reproduce it, this means that part of the working-day is unpaid labor-time; this unequal exchange only appears an equal one superficially in the sphere of circulation, and only in the eyes of the “free-trader *vulgaris*.”⁸¹ Moral standards are therefore not only conditioned by the mode of production but by the class structure of society and are contested along class lines.⁸² Moreover, as Sean Sayers has convincingly argued, for Marx the capitalist mode of production has also produced the material basis for a socialist mode of production and different moral standards that correspond to it, which means that bourgeois moral standards can be challenged by socialists as unjust without false appeal to universal moral truths.⁸³ Marx’s position is underpinned by an idea of historical *progress*; namely that human needs, capacities, and powers as progressively developed by the successive social formations in history.⁸⁴ As should be clear, this idea of historical progress in Marx’s materialist conception of history should not be identified with the idea of progress in “On

the Jewish Question,” which was written before Marx developed this conception of history and indeed became a communist.

Marx’s argument in *Capital* implies that an alternative set of new legal relations would be needed for “an association of free men, working with the means of production held in common.”⁸⁵ The “Critique of the Gotha Programme” (written 1875) confirms this. Marx’s criticism of the vague Lassallean demand in the draft program of the German socialists for “a fair distribution of the proceeds of labour”⁸⁶—and his reminder to the Lassalleans that distribution under capitalism is consistent with the standards of fairness based on the present mode of production—has been cited as evidence that Marx did not view capitalism as unjust.⁸⁷ “Right,” he argues, “can never be higher than the economic structure of society and its cultural development conditioned thereby.”⁸⁸ But his main point is that the standards of distributive justice of a society are internally related to the mode of production. A cooperative mode of production reusing organization and technological development from capitalism would be “still stamped with the birth marks of the old society from whose womb it emerges.” Thus in the lower phase of communism, the labor certificates the individual receives for their contribution to the common stock of use-values continues to reflect the amount of labor they have contributed, and therefore their natural abilities. While class differences have been abolished in this society, this form of distribution cannot take into account the differences in individual needs. Its limitation is that this “equal right is an unequal right for unequal labour,” as Marx puts it. This will benefit some over others. “To avoid all these defects,” he claims, “*right instead of being equal would have to be unequal*”; that is, the right to use-values will need to be based on these individual needs.⁸⁹ This would be the form of distribution that would correspond to the higher phase of communism, a mode of production in which “the enslaving subordination of the individual to the division of labor . . . has vanished” and in which “labor has become not only a means of life but life’s prime want,” possible if “the productive forces have also increased with the all-round development of the individual, and all the springs of co-operative wealth flow more abundantly.” “[O]nly then,” he concludes, “can the narrow horizon of *bourgeois* right be crossed in its entirety and society inscribe on its banners: from each according to his ability to each according to his needs!”⁹⁰

Marx critiques the Lassallean program by insisting that distribution cannot be considered in isolation from production, or that rights and standards of fairness are internally related to social relations and productive forces. His argument is also that only with new social relations and productive forces can there be new forms of distribution, involving new rights and standards of fairness. In this case, the principle of distributive justice of the higher phase of communism, distribution according to need, is internally related to the advanced mode of production and the conditions of abundance Marx expects of a fully developed communist society. In such a society, rights are possible that would seem unfair or absurd from the perspective of bourgeois conceptions of fairness, conditioned by a different mode of production and level of development. These rights may be as different to those in capitalism as those in capitalism are different from feudalism. Some commentators have extrapolated from this that standards of justice can only be appropriately applied to the mode of production within which they have arisen.⁹¹ As noted above, this has been challenged by the argument that Marx regards capitalism as creating the technological, organizational, and material possibilities for a cooperative mode of production and so regarding capitalism and the lower phase of communism as external to one another is mistaken.⁹² That Marx regards the standards of fairness for a communist society in its lower phase as recognizably bourgeois in origin (in the sense of allocating goods in accordance with ability, not in the sense of the distribution of private property) not only confirms this, it confirms that inherent to the capitalist mode of

production is the possibility for a more cooperative form of social organization and different forms of distributive justice. The point, then, is not to argue for any universal rights or notions of fairness, but to demand a “cooperative society based on common ownership of the means of production” and the rights and standards of fairness which form a part of this society.⁹³ I can find no evidence of Lukes’ claim that Marx’s post-capitalist society would dispense with rights altogether.

3. Conclusion

There is no reason, then, to read either “On the Jewish Question” or *Capital* as attacking the very idea of rights. Nor does describing Marx as criticizing bourgeois rights for being mere expressions of egoism do justice to his argument. “On the Jewish Question” contains a complex appraisal of the rights of bourgeois society based on what can be considered as *progressive* in relation to general human emancipation. Accordingly, he broadly criticizes rights that defend, in his view, forms of arbitrary power and he defends rights that secure social participation. *Capital* tries to show how the superficial appearance of free and fair exchange between rightful owners of commodities in the sphere of circulation masks the exploitation or the exchange of non-equivalents; coercion in the form of wage-dependency; and the alienation of rights incompatible with the capitalist mode of production. The “Critique of the Gotha Programme” raises profound questions over what standards of fairness and rights would be compatible with a cooperative mode of production. While a common thread is Marx’s critique of the mystification of rights as universal or natural, I have not found no inconsistency between these views and defending rights *per se*.

In addition to demonstrating the problems with Lukes’ reading of Marx, I have argued that a reassessment is due of the role of rights in Marx’s thought and Marxism more generally. Marx’s various critiques of bourgeois rights, not least in his magnum opus *Capital*, have helped give the view that he placed little value on rights. But his defence of citizens’ rights in “On the Jewish Question” is based on how they secure an individual’s participation in a community, which Marx argued was a prerequisite for creating a society governed by general and impartial laws and conventions rather than laws or decrees expressing arbitrary interests. I raised the question in section one about whether his defense of rights securing participation in political communities means he may have anticipated that the struggle to create a democratic society could or should involve a struggle for rights to participate in civil society and, if so, what those rights could be. Marx later in life continued to support rights of political participation, including universal suffrage. His defense of the Paris Commune shows that he valued democratic participation not only as giving power to the working-masses but, for example, as a way of ensuring that the branches of state act in the general interests of society rather than in the interests of class, bureaucracy, or heads of state.⁹⁴ What I find curious is that, while he supports and praises cooperative production, for having “shown that production on a large scale, and in accord with the behests of modern science, may be carried out without the existence of a class of masters employing a class of hands,”⁹⁵ there is little recognition in his writings that democratic participation in cooperative production should be a *right* in post-capitalist society, although it may be inferred from his description of such as a society as a “co-operative society based on common *ownership* of the means of production.”⁹⁶ This may be because of Marx’s suspicion of the way that demands for rights tended to take the form of universalizing these rights in a way he not only found degrading (as discussed in section one) but also as “perverting . . . the realistic outlook, which it cost so much effort to instil into the Party but which now taken root in it, by means of ideological nonsense about right and other trash so common among the democrats and French socialists.”⁹⁷

But there is no need for Marxism or socialism to be as stringent as Marx in this respect. His main insight was that rights are internally related to historically specific social relations of production; productive forces; forms of social consciousness; and political and legal relations. Given this, a reassessment is due on what kind of rights and standards of fairness would be appropriate for a society with a more cooperative and democratic mode of production. Marx's writings prompt socialist movements to avoid framing their arguments in terms of bourgeois rights, which he tries to show are inextricably bound up with exploitation, and to avoid putting abstract utopian thinking in political programs. Instead, his writings suggest labor and socialist movements examine the development of productive forces, social relations, forms of social consciousness, and political and legal relations in capitalism; to look to the alternative forms of society these developments currently make possible; consider what kind of rights are consistent with these concrete possibilities; and center their demands for rights *on those*. Marx's writings suggest that these rights may take the form of securing an individual's capacity to participate in community or cooperative efforts. This discussion is beyond the present scope but made necessary by capitalism's continual revolutionizing of the productive forces of society. (Marx in the *Grundrisse* pinned hopes on automation creating the possibility for a reduction in labor-time and for new forms of distribution.)²⁸ Revisiting Marx's critique of liberal rights in *Capital*, then, should prompt a constructive discussion for socialists around rights.

Notes

1. An early draft of this paper was presented at Political Studies Association annual conference at Glasgow on April 11, 2017. My thanks to the helpful comments given there and to the feedback received from the anonymous reviewers. [↗](#)
2. Steven Lukes, "Can a Marxist Believe in Human Rights?," *Praxis International* 1 (1982) and *Marxism and Morality* (Oxford: Oxford University Press, 1985). [↗](#)
3. Regarding the debate on the role of justice in Marx's thought, the argument that Marx did not condemn capitalism as unjust has become known as the "Tucker-Wood thesis." See Robert Tucker, *The Marxian Revolutionary Idea* (New York: W.W. Norton, 1969); Allen Wood, "The Marxian Critique of Justice," *Philosophy and Public Affairs* 1, no. 3 (1972), reprinted in *Marx, Justice, and History*, ed. Marshall Cohen, Thomas Nagel, and Thomas Scanlon (New Jersey: Princeton University Press, 1980); Allen Wood, "Marx on Right and Justice: A Reply to Husami," *Philosophy and Public Affairs* 8, no. 3 (1979), reprinted in *Marx, Justice, and History*, ed. Cohen, Nagel, and Scanlon; and Allen Wood, *Karl Marx*, 2nd edition (London: Routledge, 2004). See also Derek Allen, "Is Marxism a Philosophy?," *Journal of Philosophy* 71 (1974); George Brenkert, "Freedom and Private Property in Marx" in *Marx, Justice, and History*, ed. Cohen, Nagel, and Scanlon; and Allen Buchanan, *Marx and Justice: The Radical Critique of Liberalism* (New Jersey: Rowman and Littlefield, 1982). For arguments that Marx did in fact criticize capitalism as unjust see Richard Arneson, "What's Wrong with Exploitation?," *Ethics* 91 (1981); Gerald Allan Cohen, "Review of Karl Marx by Allen W. Wood," *Mind* XCII, no. 367 (1983); Jon Elster, "Exploitation, Freedom, and Justice," in *Marxism*, ed. Roland Pennock and John Chapman (New York and London: New York University Press, 1983); Norman Geras, "The Controversy About Marx and Justice," *New Left Review* 150 (1985); Michael Green, "Marx, Utility, and Right," *Political Theory* 11, no. 3 (1983); Roger Hancock, "Marx's Theory of Justice," *Social Theory and Practice* 1 (1971); Ziyad Husami, "Marx on Distributive Justice," *Philosophy and Public Affairs* 8 (1978), reprinted in *Marx, Justice, and History*, ed. Cohen, Nagel, and Scanlon; and Sean Sayers, "Analytical Marxism and Morality," *Canadian Journal of Philosophy* 19 (1989). For useful

surveys of the debate, see Geras, “The Controversy About Marx and Justice” and Lukes, *Marxism and Morality*.

Regarding the debate that Lukes’ work initiated over the role of human rights in Marx’s thought and Marxism, see Leslie Macfarlane “Marxist Theory and Human Rights,” *Government and Opposition* 17 (1982); Leszek Kolakowski, “Marxism and Human Rights,” *Daedalus* 112, no. 4 (1983); Drucilla Cornell, “Should a Marxist Believe in Rights?,” *Praxis International* 45 (1984); William McBride, “Rights and the Marxian Tradition,” *Praxis International* 57 (1984); David Baxter, “Marx, Lukes, and Human Rights,” *Social Theory and Practice* 15, no. 3 (1989); Amy Bartholomew, “Should a Marxist Believe in Marx on Rights?,” *The Socialist Register* 26 (1990); Christopher Boyd, “Can a Marxist Believe in Human Rights?,” *Critique* 37 (2009); and Justine Lacroix, “Should a Marxist Believe in Human Rights?,” in *Arguing about Justice: Essays for Philippe Van Parijs* (Louvain-la-Neuve: Presses Universitaires de Louvain, 2011). See also Jeremy Waldron, ed., *Nonsense upon Stilts: Bentham, Burke, and Marx on the Rights of Man* (London: Methuen, 1987), 126–31. [↗](#)

4. Lukes, *Marxism and Morality*, 28–9. [↗](#)
5. *Ibid.*, 65. [↗](#)
6. *Ibid.*, 68. [↗](#)
7. *Ibid.*, xii–xii. [↗](#)
8. *Ibid.*, xii–iii; 70. [↗](#)
9. Namely, Cornell, “Should a Marxist Believe in Rights?” and McBride, “Rights and the Marxian Tradition,” respectively. [↗](#)
10. Bartholomew “Should a Marxist Believe in Marx on Rights?” and Boyd, “Can a Marxist Believe in Human Rights?” [↗](#)
11. David Leopold. *The Young Karl Marx: German Philosophy, Modern Politics, and Human Flourishing* (Cambridge: Cambridge University Press, 2008), 150. [↗](#)
12. Lukes, *Marxism and Morality*, 63. [↗](#)
13. David McLellan, *Karl Marx: His Life and Thought* (UK Papermac/MacMillan, 1995), 7–27; Julius Carlebach, *Karl Marx and the Radical Critique of Judaism* (London: Routledge and Kegan Paul, 1978); and Leopold, *The Young Karl Marx* for discussion of the context in which “On the Jewish Question” was written. [↗](#)
14. Karl Marx, “On the Jewish Question,” in *Karl Marx: Early Writings*, ed. Gregor Benton, Lucio Colletti, and Rodney Livingstone (UK: Penguin, 1992 [1975] [↗](#)
15. *Ibid.* [↗](#)
16. Lukes, *Marxism and Morality*, 65. For the classic discussion of the meaning of rights see Wesley Hohfeld, “Section One” of *Fundamental Legal Conceptions as Applied to Judicial Reasoning*, ed. David Campbell and Phillip Thomas (London and New York: Routledge, 2016). [↗](#)
17. Lukes, *Marxism and Morality*, 67. See Ronald Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977) regarding the theory of rights as having “trumping” power over other concerns. [↗](#)
18. Lukes, *Marxism and Morality*, 65. [↗](#)
19. Boyd, “Can a Marxist Believe in Human Rights?,” 585. [↗](#)
20. Lukes, *Marxism and Morality*, 64–5. [↗](#)
21. *Ibid.*, 63. [↗](#)
22. Marx, “On the Jewish Question,” 228–9 (emphasis in original). [↗](#)
23. *Ibid.*, 227–8. [↗](#)
24. Bartholomew, “Should a Marxist Believe in Marx on Rights?,” 247–8. [↗](#)
25. Leopold, *The Young Karl Marx*, 151–55. [↗](#)
26. Marx, “On the Jewish Question,” 231. [↗](#)
27. Karl Marx, “Critique of Hegel’s Philosophy of Right, Introduction” in *Karl Marx: Early Writings*, 253. [↗](#)

28. Karl Marx, "Debates on Freedom of the Press," in *Karl Marx–Frederick Engels, Collected Works*, Vol. 1, an English edition (Moscow, London, New York; Lawrence and Wishart, 1975), 162. See also, R. Hunt, *The Political Ideas of Marx and Engels*, Vol. I (UK: MacMillan, 1975), 37. [↗](#)
29. Lukes, *Marxism and Morality*, 61. [↗](#)
30. See McLellan, *The Young Hegelians* (UK: MacMillan, 1969); and Leopold, *The Young Karl Marx*, for further discussion. [↗](#)
31. Marx, K. "Critique of Hegel's Doctrine of the State" in *Karl Marx: Early Writings*, 87–8. [↗](#)
32. Marx, "On the Jewish Question," 221. [↗](#)
33. I have emphasized that this is Marx's view in "On the Jewish Question" because the first time Marx defends communism is in the manuscripts he wrote during the summer of 1844, often referred to as the Economic and Philosophical Manuscripts. See endnote 57 for literature on the democratic republicanism of Marx's writings in 1842–4. That Marx is writing as a democratic republican in "On the Jewish Question" and as a communist in *Capital* and "The Critique of Gotha Programme" is one reason for not reading into these later writings this particular view of historical progress. The other is that the teleological view of history Marx sketches in the "Critique of Hegel's Doctrine of State" and "On the Jewish Question" is not based on the conceptual framework of the materialist conception of history that Marx uses in *Capital* and "The Critique of Gotha Programme." Without entering into either the long-standing debate over the continuity of Marx's thought or the discussion over whether Marx's materialist conception of history remains a teleological one, both of which are beyond the present scope, the very minimal point can be made that the teleological view of history developing towards the full and final realisation of a true democracy is idiosyncratic to the "Critique of Hegel's Doctrine of State" and "On the Jewish Question," and other texts written at this time. [↗](#)
34. *Ibid.*, 232. [↗](#)
35. Karl Marx, "Letters From the Franco-German Yearbooks," in *Karl Marx: Early Writings*, 201. [↗](#)
36. Marx, "On the Jewish Question," 232–3. [↗](#)
37. *Ibid.*, 219. [↗](#)
38. *Ibid.*, 234. [↗](#)
39. Marx quoting Hegel in "Critique of Hegel's Doctrine of the State," 61. [↗](#)
40. Marx, "On the Jewish Question," 220 [↗](#)
41. *Ibid.*, 234. [↗](#)
42. *Ibid.*, 230; Bartholomew, "Should a Marxist Believe in Marx on Rights?," 249 (emphasis added). [↗](#)
43. Marx, "Critique of Hegel's Doctrine of State," 148. [↗](#)
44. Marx, "On the Jewish Question," 241. [↗](#)
45. Marx, "Critique of Hegel's Doctrine of the State," 146–7. [↗](#)
46. Marx, "On the Jewish Question," 239. [↗](#)
47. *Ibid.*, 220. [↗](#)
48. *Ibid.*, 241. [↗](#)
49. Christopher Clark, *Iron Kingdom: The Rise and Downfall of Prussia, 1600–1947* (London: Allen Lane, 2006), 445. The debate was also reignited by the "Damascus Affair"—see Carlebach, *Karl Marx and the Radical Critique of Judaism*, 69–75. [↗](#)

50. Marx quoted in McLellan, *Karl Marx: His Life and Thought*, 103. [↗](#)
51. See Leopold, *The Young Karl Marx*, 109–29; R. Boer, “Friends, Radical and Estranged: Bruno Bauer and Karl Marx,” *Religion and Theology* 17 (2010): 374–7; and Carlebach, *Karl Marx and the Radical Critique of Judaism*, 125–47, for more detailed discussion. [↗](#)
52. Bruno Bauer, “The Jewish Problem” in *The Young Hegelians: An Anthology*, ed. Lawrence Stepelevich (Cambridge: Cambridge University Press, 1983), 195. [↗](#)
53. Marx’s refutation of Bauer’s other argument is that Jewish egoism comes not from theology but the historical confinement of Jews to the interstices of traditional civil society as petty traders and money lenders, excluded from other occupations. With the commercialization of civil society and the increased participation of Christians in these activities, these old distinctions no longer had meaning. His conclusion that an end to this egoistic form of civil society would be the abolition of Judaism (to mean egoistic, commercial activity here), as well as some of his other remarks, have been described vulgar and insulting at best and anti-Semitic at worst. See Carlebach, *Karl Marx and the Radical Critique of Judaism* for a critique of the text as an anti-Semitic document (352), as well Helmut Hirsch “The Ugly Marx: Analysis of An ‘Outspoken Anti-Semite,’” *Philosophical Forum* 8 (1978): 2–4; and William Blanchard “Karl Marx and the Jewish Question,” *Political Psychology* 5, no. 3 (September 1984). For challenges to this interpretation see David McLellan, *Marx Before Marxism* (UK, MacMillan, 1970) and McLellan, *Karl Marx: His Life and Thought*; Shlomo Avineri, “Marx and Jewish emancipation,” *Journal of the History of Ideas* 25, no. 3 (1964), and *The Social and Political Thought of Karl Marx* (Cambridge: Cambridge University Press, 1968). See also David Fischman, “The Jewish Question About Marx,” *Polity* 21, no. 4 (1989); Yoav Paled, “From Theology to Sociology: Bruno Bauer and Karl Marx on the Question of Jewish Emancipation,” *History of Political Thought* 23, no. 3 (1992); and Leopold, *The Young Karl Marx*, for important contributions. [↗](#)
54. Marx, “On the Jewish Question,” 227. [↗](#)
55. There is a great deal of literature on Marx’s critique of ideology in the context of his critique of religion. See for example, David McLellan, *Marx and Religion* (London: MacMillan, 1987); Bertell Ollman, *Alienation*, 2nd edition (Cambridge: Cambridge University Press, 1977), 237–234; and Denys Turner, “Religion: Illusions and liberation” in *The Cambridge Companion to Karl Marx*, ed. Terrell Carver (Cambridge: Cambridge University Press, 1991). [↗](#)
56. Lukes, *Marxism and Morality*, 68–9. [↗](#)
57. Marx, “Critique of Hegel’s Doctrine of State,” 191. [↗](#)
58. *Ibid.*, 112–3. [↗](#)
59. *Ibid.*, 87. See Marx’s critique of Hegel’s monarchy, bureaucracy, and legislature in “Critique of Hegel’s Doctrine of State,” 127, 191. [↗](#)
60. Boyd, “Can a Marxist Believe in Human Rights?,” 586. [↗](#)
61. For discussion of Marx’s radical democratic republicanism in his early writings, see Shlomo Avineri, *The Social and Political Thought of Karl Marx* (Cambridge: Cambridge University Press, 1968), 35–8.; Richard Hunt, *The Political Ideas of Marx and Engels*, Vol. I (London: MacMillan, 1975), 55, 66; Jeffrey Isaac, “The Lion’s Skin of Politics: Marx on Republicanism,” *Polity* 22, no. 3, 1990; Leopold, *The Young Karl Marx*; and Patricia Springborg, “Marx on Democracy, Participation, Voting, and Equality,” *Political Theory* 12, no. 4 (1984). [↗](#)

62. See Marx, "Debates on Freedom of the Press," 162. For the right to vote, see Marx, "Critique of Hegel's Doctrine of State," 191. [↗](#)
63. Marx, "On the Jewish Question," 228. [↗](#)
64. See for example Joseph Femia, *Marxism and Democracy* (Oxford: Clarendon, 1993). [↗](#)
65. Compare to how, in "The Civil War in France," written in 1871, Marx praises the Paris Commune as a democratic community confronting the supposedly non-political relations between capitalist and worker with its restraining the arbitrary power of the capitalist by "prohibition, under penalty, of the employers" practice to reduce wages by levying upon their workpeople fines under manifold pretexts—a process in which the employer combines in his own person the parts of legislator, judge, and executor, and filches the money to boot." Karl Marx, "The Civil War in France" in *Karl Marx–Frederick Engels, Collected Works*, Vol. 22, an English edition (Moscow, London, New York; Lawrence and Wishart, 1986), 334. [↗](#)
66. Marx first adopted the term communism to describe his political position in the spring of 1844 and the first text in which we find him providing a defense of communism is the manuscripts he wrote in the summer of that year, now known as the *Economic and Philosophical Manuscripts*. See McLellan, *Karl Marx: His Life and Thought*, 87. [↗](#)
67. Karl Marx, *Capital: Volume I*, ed. Ben Fowkes and Ernest Mandel (UK: Penguin, 1990), 280. [↗](#)
68. For discussion of Marx's critique of morality as ideological, see Buchanan, *Marx and Justice*; Lukes, *Marxism and Morality*; George McCarthy, "Marx's Social Ethics and Critique of Traditional Morality," *Studies in Soviet Thought* 29, no. 3 (1985); Jeffrey Reiman, "Moral Philosophy: The Critique of Capitalism and the Problem of Ideology," in *Cambridge Companion to Karl Marx*; Sean Sayers, "Analytical Marxism and Morality"; and Wood, *Karl Marx*. The classic Soviet literature on this issue is Evgeny Pushukanis, *Law and Marxism: A General Theory*, trans. Barbara Einhorn (London: Ink Links, 1978). [↗](#)
69. Marx, *Capital*, 272–3. [↗](#)
70. *Ibid.*, 875. [↗](#)
71. *Ibid.*, 884–6; 891–2; 897–903; 915–7. [↗](#)
72. *Ibid.*, 878–9. [↗](#)
73. *Ibid.*, 883. [↗](#)
74. *Ibid.*, 876. [↗](#)
75. See David Harvey, *A Companion to Marx's Capital* (London: Verso, 2010), 189–201, for a useful discussion. [↗](#)
76. Marx, *Capital*, 179. [↗](#)
77. One passage which has been the subject of much discussion is Marx's description of the fact that labor-power is a commodity that can produce more value than itself embodies as "a piece of good luck for the buyer, but by no means an injustice towards the seller." Marx, *Capital*, 301. For discussion see Geras, "The Controversy About Marx and Justice," 50; 55–6. [↗](#)
78. This undercuts apologist arguments that the exploitation in capitalism lies in individual exploitative practices—particular capitalists exploiting their workers by paying them for less than the value of their labor-power, for instance. This would not be an exchange of equivalents and unjust according to bourgeois standards of

justice. An apologist for capitalism can condemn these as individual acts of exploitation and moralistically demand that workers be paid for the full value of their labor-power, while decrying attempts to impose limits on working hours as an infringement on the *worker's* liberty to sell their commodity, labor-power, however they please, and insisting that a purer form of capitalism can realize fair exchange to everyone's benefit. [↗](#)

79. See Lukes, *Marxism and Morality*, 50; Geras, "The Controversy About Marx and Justice," 51; and Wood, "The Marxian Critique of Justice," 13. [↗](#)
80. Particular attention has been paid to this passage on surplus value: "There is not one single atom of its value that does not owe its existence to unpaid labor. The means of production, with which the additional labour-power is incorporated, as well as the necessaries with which the labourers are sustained, are nothing but component parts of the surplus-product, of the tribute annually exacted from the working class by the capitalist class. Though the latter with a portion of that tribute purchases the additional labour-power even at its full price, so that equivalent is exchanged for equivalent, yet the transaction is for all that only the old dodge of every conqueror who buys commodities from the conquered with the money he has robbed them of." Marx, *Capital*, 728. See Husami, "Marx on Distributive Justice," 68–9. For other instances of Marx's use of "theft" or "robbery" see *Capital*, 376; 875; and 929. Gerald Cohen: "since . . . Marx did not think that by capitalist criteria the capitalist steals, and since he did think he steals, he must have meant that he steals in some appropriately non-relativist sense. And since to steal is, in general, wrongly to take what rightly belongs to another, to steal is to commit an injustice, and a system which is 'based on theft' is based on injustice." Cohen, "Review of *Karl Marx*," 443. [↗](#)
81. See the discussion in Geras, "The Controversy About Marx and Justice," 56; and Husami, "Marx on Distributive Justice," 53. [↗](#)
82. Husami, "Marx on Distributive Justice," 47. [↗](#)
83. Sayers, "Analytical Marxism and Morality," 98. [↗](#)
84. *Ibid.*, 101. [↗](#)
85. Marx, *Capital*, 171. [↗](#)
86. Karl Marx, "Critique of the Gotha Programme," in *Karl Marx: Selected Writings*, ed. David McLellan (Oxford: Oxford University Press, 2000), 615. There is a great deal of discussion about this passage as offering possible evidence that Marx regarded communism as a society beyond claims of justice. See Geras, "The Controversy About Marx and Justice," 50–1; 53–4; and 60–1, for a survey of this discussion. [↗](#)
87. See Geras, "The Controversy About Marx and Justice," 50, 52, for a survey of this discussion. I interpret Marx's meaning here to be a criticism of the view that the standard of distributive justice can be independent of the mode of production, rather than being against standards of justice altogether. [↗](#)
88. Marx, "Critique of the Gotha Programme." [↗](#)
89. Marx, "Critique of the Gotha Programme," emphasis added. [↗](#)
90. Marx, "Critique of the Gotha Programme," 615, emphasis added. There is a great deal of discussion about this passage as offering possible evidence that Marx regarded communism as a society beyond claims of justice. See Geras, "The Controversy About Marx and Justice," 50–1; 53–4; and 60–1 for a survey of this discussion. [↗](#)
91. See for example, Buchanan, *Marx and Justice*, 53 and Wood, "The Marxian Critique of Justice," 13. [↗](#)
92. See Hohfeld, "Section One," *Fundamental Legal Conceptions as Applied to Judicial Reasoning*; especially pages 11 and 12. [↗](#)
93. Marx, "Critique of the Gotha Programme," 614. [↗](#)
94. Marx, "The Civil War in France," 330–4. [↗](#)

95. Karl Marx, "Inaugural Address to the First International" in *Karl Marx: Selected Writings*, 580. [↗](#)
96. I have emphasized Marx's use of ownership, which implies rights as a bundle of powers, privileges, immunities and claims, rather than physical *control*. As in Hohfeldian analysis in which complex rights are comprised of privileges, claims, powers, and immunities. See Hohfeld, "Section One," *Fundamental Legal Conceptions as Applied to Judicial Reasoning*, especially 11-12. [↗](#)
97. Marx, "Critique of the Gotha Programme," 614-5. [↗](#)
98. Karl Marx, *Grundrisse*, ed. Martin Nicolaus (UK: Penguin, 1973), 831. [↗](#)

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Martin Moorby is a Ph.D. candidate in the Politics department at the University of Exeter, UK. His doctoral thesis, *Unravelling the Riddle: Alien Politics in the Thought of Karl Marx*, examines political alienation as a conceptual space in Marx's writings.



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